IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4219 OF 1994

Maharashtra Mitra Mandal through CEO, behind S.T.Stand, Ulhasnagar, Dist. Thane. — Petitioner

versus

1. Mohan Shankar Shelvale
2. Head Mistress, Maharashtra Mitra Mandal, Ulhasnagar, Dist.Thane. — Respondents

Shri T.D.Deshmukh i/by Shri A.A.Kumbhakoni for petitioner

Shri R.S.Apte for respondent no.1.

CORAM : R.M.S.KHANDEPARKAR, J.
DATE : 06th November 2006

ORAL JUDGEMENT :-

1. Heard advocates for the parties. The petitioner challenges an order dated 16th July 1994 passed by the School Tribunal allowing the appeal filed by the respondents against termination of his service. The Tribunal has allowed the appeal on the ground that though the letters of appointment were issued as if the respondent being appointed on temporary basis, in fact, he was appointed in permanent vacancy and for that purpose the contention of management

that it was meant for reserved category candidate, was not at all established, as no evidence in that regard including Roster was produced.

2. The learned advocate for petitioner sought to challenge the impugned order mainly on the ground that the appeal was filed beyond the period of limitation without even an application for condonation of delay. Undisputedly, the appeal was required to be filed on 30th June 2003 but in fact it was filed on 12th July 1993. Thus, there was a delay of 12 days in filing the appeal. Undisputedly, the respondent had not filed any application for condonation of delay. Nevertheless, the fact remains that the impugned order itself discloses that the Tribunal after taking into account facts and circumstances of the case and after hearing the parties, has condoned the delay in filing the appeal. Apparently, the Tribunal has exercised its discretion judiciously as on merits the respondent has a very good case. The contention on behalf of the petitioner that the post in which the respondent was appointed was meant for reserved category candidate, was not at all established before the Tribunal. The Tribunal

has clearly observed that the petitioner in that regard has not produced any evidence including the Roster. Besides this, even the order of appointment which is issued to the respondent no where discloses that he was appointed in reserved vacancy.

3. My attention was sought to be drawn by the learned advocate to the advertisement that was issued for filling up the post, which advertisement apparently discloses that the post was meant for reserved category candidates. Those advertisements were published on 20th May 1992 and 22nd May 1993 respectively. The appointment letter which was issued to the respondent in the year 1991 was with reference to his application dated 3rd May 1991. Another appointment letter which was issued to the respondent in 1992 was with reference to his application dated 2nd May 1992. Thus, the appointment orders that were issued in favour of respondent, were much prior to the issuance of advertisement which is sought to be relied upon, in support of the contention that the appointment of respondent was in reserved category vacancy. Obviously, therefore, there is absolutely no material in possession of the petitioner to

establish that the respondent was appointed in reserved category vacancy. The finding in that regard arrived at by the Tribunal cannot be found fault with.

4. It cannot be disputed that merely because the appointment order is issued as having been appointed temporarily, if the appointment is in relation to a permanent vacancy and the appointee is duly qualified to filling in post, then such appointment would be deemed to be an appointment on probation. Law in that regard is well settled. In the case in hand, it is not in dispute that the respondent was appointed in permanent vacancy. It is true that the appointment letters disclose that the appointment was on temporary basis. However, the Tribunal in the facts and circumstances, which disclose that the appointment was in fact in permanent vacancy, has held that the said appointment should be deemed to be on probation. No fault could be found in the said finding of the Tribunal which is in consonance with the well established law in that regard.

5. As already stated above, since the delay was of only 12 days in filing the appeal and the same

was condoned, taking into consideration good case on merits in favour of the respondent herein, there is no case for interference in the said finding of Tribunal. For the reasons stated above, therefore, no case is made out for interference in writ jurisdiction and the petition is dismissed. Rule is discharged. No order as to costs.

(R.M.S.KHANDEPARKAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO.4219 OF 1994

DATE OF DECISION : 6th November 2006

FOR APPROVAL AND SIGNATURE OF :

THE HON'BLE SHRI JUSTICE R.M.S.KHANDEPARKAR :-

1. Whether Reporters of Local papers may be allowed to see the judgement:

2. To be referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair copy of judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad and Goa Offices ?